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cc:order, docket, remand letter to Los Angeles Superior Court,
Stanley Mosk Courthouse, No. 12U05502

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE BANK OF NEW YORK MELLON,)	Case No. CV 12-10643 DDP (MRWx)
)	
Plaintiff,)	ORDER REMANDING CASE TO STATE
)	COURT
v.)	
)	
ANDREA A. DUNLAP,)	
)	
Defendant.)	
_____)	

On December 12, 2012, Defendant Andrea Dunlap removed this action from State Court. Although the Complaint being removed is not attached, it is apparently a Complaint for Unlawful Detainer. (Notice of Removal ¶ 36.) The Notice of Removal identifies the state action as Case No. 12U05502. That same state action was removed to this court on August 1, 2012, and remanded to state court on October 10, 2012. (Bank of New York Mellon v. Andrea A. Dunlap et al, 12-cv-06656.) Case No. 12U05502 is a Complaint for Unlawful Detainer, with a demand for less than \$10,000, based exclusively on California state law. (Bank of New York Mellon v. Andrea A. Dunlap et al, 12-cv-06656, RJN Exh. 1.)

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1 "A defendant who fails in an attempt to remove on the initial
2 pleadings can file a removal petition when subsequent pleadings or
3 events reveal a new and different ground for removal." Kirkbride
4 v. Cont'l Cas. Co., 933 F.2d 729, 732 (9th Cir. 1991) (internal
5 citation and quotation marks omitted). Here, Defendant's Notice of
6 Removal bases removal on 28 U.S.C. § 1443. Defendant invoked the
7 same ground of removal, among others, in her previous Notice of
8 Removal. (Bank of New York Mellon v. Andrea A. Dunlap et al, 12-cv-
9 06656, Notice of Removal ¶ 18 ff.) While Plaintiff did not address
10 this ground of removal in its Motion to Remand, Defendant did not
11 oppose the Motion to Remand at all. Under Local Rule 7-12, failure
12 to file a required paper such as an opposition may deemed consent
13 to the granting of the motion. The court therefore deemed that the
14 Defendant consented to remand. Because Defendant has not presented
15 a ground for removal not present in her original Notice of Removal,
16 and because she consented to the first remand of the action, the
17 court again remands the action to state court.

18 The court notes that there is no federal question in the
19 Complaint, which presents only issues of state law. The court also
20 notes that Defendant has not met the requirements for removal under
21 28 U.S.C. § 1443. Under § 1443(1), removal will only be permitted
22 if the defendant can satisfy a two-part test. Johnson v.
23 Mississippi, 421 U.S. 213, 219 (1975). "First, the petitioners must
24 assert, as a defense to the prosecution, rights that are given to
25 them by explicit statutory enactment protecting equal racial civil
26 rights. Second, petitioners must assert that the state courts will
27 not enforce that right, and that allegation must be supported by
28 reference to a state statute or a constitutional provision that

1 purports to command the state courts to ignore the federal rights."
2 Patel v. Del Taco, Inc., 446 F.3d 996, 999 (9th Cir. 2006) (internal
3 citations and quotation marks omitted). Generally, the denial of a
4 petitioner's equal civil rights must be "manifest in a formal
5 expression of state law." State of Georgia v. Rachel, 384 U.S.
6 780, 803 (1966).

7 Defendant asserts that the Supreme Court's longstanding
8 interpretation of 28 U.S.C. § 1443 is unconstitutional. (Notice of
9 Removal ¶ 16.) The court declines to consider the
10 constitutionality of that statute in the context of a second notice
11 of removal of the same action when Defendant consented to the first
12 remand by failing to oppose it.

13 For these reasons, the court REMANDS the action to state
14 court.

15 IT IS SO ORDERED.

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18 Dated: April 19, 2013


DEAN D. PREGERSON
United States District Judge